

The 4th February, 1982

No. 9(1)82-6 Lab./248.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. The Haryana Cooperative Sugar Mills Ltd., Rohtak. :-

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 50 of 80

between

SHRI PAWAN KUMAR, WORKMAN AND THE MANAGEMENT OF M/S. THE HARYANA
COOPERATIVE SUGAR MILLS LTD., ROHTAK

Present.—

Shri Sagar Ram Gupta for the workman.

Snri R.D. Sharma for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor—vide His order No. ID-RTK/194-79/11323, dated 3rd March, 1980 under section 10(1)(c) of the I.D. Act for adjudication of the dispute existing between Shri Pawan Kumar, workman and the management of M/s. The Haryana Cooperative Sugar Mills Ltd., Rohtak. The term of the reference was :-

Whether the termination of services of Shri Pawan Kumar was justified and in order ? If not, to what relief is he entitled ?

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On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices, filed their respective pleadings, on the basis of which the following issues were framed :-

1. Whether this court has no jurisdiction in view of the Punjab Cooperative Societies Act ?
2. Whether the workman is still in service of the mills and his services were never terminated ? If so, to what effect ?
3. As per the term of Reference ?

The management examined Shri Suraj Mal, Clerk respondent, Shri Ram Niwas, Assistant Time Keeper as their witnesses and closed their case. The workman examined himself as his only witness and closed his case. I heard the learned representatives of the parties and decide issue-wise as under :-

Issue No. 1.— Issue No. 1 was not pressed by the management and the same was withdrawn. The issue is accordingly decided against the management.

Issue Nos. 2 and 3.— The workman has alleged in his notice of demand that he was appointed in June, 1976 as Driver in the grade of Rs. 160- -6- -190- -EB- 7- -263 with usual allowances and he had been working as a Car Driver. The management terminated his services in July, 1977 and he was reinstated on 23rd January, 1979 in consequence of the award of the Labour Court, Rohtak dated 19th October, 1978. He has further alleged that the management had been harrassing him and had always been in search of ways and means to victimise him. On 22nd September, 1979 he was directed to work as a Tractor Driver the job on which he never worked nor he had the necessary licence. He requested the management on 24th September, 1979 to give him duty on car, jeep or matador and not to put him on tractor. The management did not pay heed to this request and to the subsequent request on 3rd October, 1979. He has further alleged that the management was not giving him service out of spite and vengeance. The workman reiterated the same allegations,—vide his statement of claim and the rejoinder filed by him.

The management denied the allegation of the workman and pleaded that the workman was not appointed as Car Driver but as a Driver and to transfer the workman from car to tractor was an administrative function and the same was done in routine. The workman proceeded on leave on ground of sickness at the first instance attended his duties for a few days, thereafter he had been absenting himself from duty in an unauthorised manner and it was wrong to say that his services had been terminated by the respondent mills. In fact the workman had been issued a chargesheet for an unauthorised continuous wilful absence from duty. The management further pleaded that the workman was asked to resume his duty on several occasions and he was still in service.

The management witness MW-1 has stated that the workman was appointed, *vide* order copy Ex. MW-1/1. He was posted as Car Driver and transferred on tractor, *vide* order copy Ex. MW-1/3. In view of the resolution Ex. MW-1/2, he gave out in his cross-examination that prior to June, 1979 drivers working in the Mills were in different grades and the recommendation of the second Wage Board were adopted and implemented by the mill. The witness has admitted the documents filed by the workman which are in the nature of correspondence which took place between the workman and the management. MW-2 has deposed that the mill has not terminated the services of the workman but the workman continued to be absent since October, 1979 to Decembert. 1980 and his name appears in the mills attendance register all along the period but he has been marked absent. MW-2 has admitted in his cross-examination that Ex. W-8 was issued according to which the attendance of the workman was to be marked until he performed his duties as tractor driver. The witness could not say as to which of the chargesheet was given to the workman nor he could say as to Ex. W-14 which is the letter directing the workman to participate in the departmental enquiry and the workman replied the same, *vide* Mark 'B' which afterwards exhibited W-16. He has also given out that on 3rd October, 1979 and 6th October, 1979 the workman signed in the daily attendance register and it was written therein that 'he signed forcibly' and 'he has not worked'. He could not say whether there was different categories in the second Wage Board report for tractor driver to the other vehicle drivers. Both the management witnesses denied the suggestion put to them as incorrect that the management was adopting hostile attitude against the workman after his reinstatement and wanted to victimise him.

The workman has also deposed that after his reinstatement the management transferred him into the tractor driver duty and he was involved in a criminal proceeding under section 107/151 Cr. P. C. The management retransferred him to jeep when he gave them in writing that he did not know tractor driving. He was again transferred to Matador and then to tractor again. He has further stated that he went to mills to report for duty but the management did not allow him to resume duty. The workman stated in his cross examination that the decision of the Board was conveyed to him for transfer of driver from Matador to Tractor and *vice versa* and the grade was made the same for all drivers but he did not protest against this decision. The workman denied that he received several letters asking him to resume duty as tractor driver. In fact he received only one letter dated 24th Septembr, 1979 to which he replied and stressed therein that he be posted on jeep, car or matador and not on tractor only then he would resume his duties.

From the oral evidence and the documents Exhibit W-8 and W-9 it is clear that the management was adamant on posting the workman on tractor driving duty while the workman insisted on being provided duty on car jeep or matador. The management representatives argued that it was the prerogative of the management to transfer and post its employees according to the exigency of the work, to the benefit of the mills and to derive the maximum advantage. From the plain reading of Ex. W-8 and Ex. W-9 it is clear that the applicant is not to be marked present till he does not resume his duty on the tractor and get a certificate to this effect from the Cane Manager. It is implied from these documents that even if the workman goes to report for his attendance the same could not be marked as he actually did not resume his duties on the tractor on the basis of Ex. W-8 and W-9. The fact is that the workman did not agree to work on tractor and as such he was marked absent. Now the question which requires to be decided remains that if the management was justified to transfer the workman to the tractor duty and the workman was to comply with the order of transfer. There are various categories of drivers according to the Wage Board Report which has been adopted and implemented by the respondent mill and the various categories carry different grades. The workman according to his appointment letter Ex. MW1-1 is appointed as Driver in the grade of Rs 160-6-190. This grade has been given to the category of skilled 'A' drivers at serial No. 35 of the Wage Board Report at page 272 in appendix 5A under heading list of nomenclature. Tractor driver is a different category carrying the scale of 140 at serial No. 35 (B). These categories were formed after due deliberations in the meetings of the leaders of various trade unions and the government at All India Level. The categories have been differentiated after a careful discussion in accordance with the nature of work involved. The management could have been just to adopt a resolution of the type given in Ex. MW-1/2 only in respect of tractor drivers. To that extent Ex. MW-1/2 can be said to be a progressive resolution but it cannot be said so in case of drivers of skilled 'A' category working on car, jeep or matador. The resolution cannot change the terms and conditions of service of a workman to his detriment. The management can make use of this resolution for recruitment of drivers in future but this cannot be made applicable on the drivers already working in the mills. The workman was appointed in skilled 'A' grade. The management must have seen his driving licence and the fact that the workman drove the car, jeep and matador only in his tenures of service and never did the tractor driving duty has come on file and is proved out. It has been admitted by the workman that he received the copy of the resolution Ex. MW-1/2 but it does not justify the assigning of duty to the workman on the tractor as neither he had a licence to drive a tractor nor he was asked by the management to get the same. The resolution Ex. MW-1/2 can bind only those drivers who had a licence for driving both types of vehicles light as well as heavy. There is evidence on the record that the workman was given the duty on the tractor after about one and a half month of his reinstatement but he was retransferred to mills jeep on his representation against this change. The passing of the resolution Ex. MW. 1/2 and the absence of any direction to the workman to get an endorsement for heavy vehicles on his licence and the transfer of the workman on the tractor and the issuance of letter's exhibit W-8 and W-9 and marking him absent on the basis of the same is a series of incidents which go to true that the management was finding ways and excuses to get rid of the workman. I am therefore clearly of the view that the workman did not absent himself wilfully but he was given and compelled to remain absent when he was not allotted duty on his main job on which he was initially appointed by forcing him to do the duties to which he was not under law permitted nor he was competent to perform. By not allowing duty to the workman

on his original job and their insistence to drive the tractor tantamounts to termination and the workman cannot be deemed to be in service on the day when the management issued letter Ex. W-8 on 24th September, 1979. The management could not justify the termination. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated 25th December, 1981.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 4501, dated 30th December, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)82-6 Lab./242.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Anand Engineering Works, Chhahetta Bazar near Town Hall, Jagadhri. :—

**BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK**

Reference No. 4 of 1979

between

**SHRI MANAK SINGH, WORKMAN AND THE MANAGEMENT OF M/S ANAND ENGINEERING
WORKS, CHHAHETTA BAZAR, NEAR TOWN HALL, JAGADHRI.**

Present—

No one for the workman.

Shri W.C. Sharma for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* order No. ID/Ymn/58-78/795, dated 5th January, 1979 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Manak Singh, workman and the management of M/s Anand Engineering Works, Jagadhri. The term of the reference was :—

Whether the termination of services of Shri Manak Singh was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices, filed their respective pleadings and the following issues were framed on the basis of their pleadings :—

- (1) Whether any enquiry before terminating the services of the workman was conducted by the employer ? If not, what is effect ?
- (2) Whether the workman was temporary or permanent employee ?
- (3) Whether the termination of services of Manak Singh was justified and in order ?

The management examined Shri Davinder Singh, resident of Jagadhri and Shri Karphool Singh, Partner as their witnesses and closed their case on 27th November, 1979. The workman was allowed several opportunities to lead his evidence and the case of the workman was closed on 19th February, 1981 when no one appeared on his behalf. The workman's representative sent an application dated 19th February, 1981 for setting aside the *ex parte*

order and for reopening of the case. As the workman has been afforded ample opportunities to prove his case and the workman's representative is used to seeking adjournments on account of his engagement with the C. M. Haryana or with the Prime Minister of India superfluously as is evident from the fact that as soon as the order for closing the case of the workman was recorded the workman's representative appeared after half an hour. I don't find any truth in the ground set forth by the workman's representative for setting aside the order dated 19th February, 1981. The workman's representative has also moved the Haryana Government for transfer of his case from this court to Labour Court, Faridabad but the instructions were received from the government that no cases shall be transferred,—vide their letter No. 6/8/80-Lab, dated 16th July, 1981 in case of such application filed by Shri Siri Ram Saini. The workman representative also verbally stated at the bar that he is not pursuing his application for transfer of cases and he would write to the government in this behalf. I heard the arguments and decide issues as under :—

Issue Nos. 1 to 3.—In his pleadings the workman has vaguely mentioned that he worked with the respondent for one year and has not given the date on which he was employed. The demand notice is a printed form. He has also mentioned there in that he worked as tapai/cuttaia/press man which is also vague. A workman cannot be employed for three different jobs. The pleadings of the management given in their written statement show that the workman worked only for 3 days from 7th February, 1977 to 11th February, 1977 and the workman did not report for duty after 11th February, 1977. The workman took on advance of Rs. 500 on 16th January, 1977. On his understanding that he would be joining his duties after a few days and in order to consume the advance money and to put pressure on the management he raised the demand leading to this reference. The management witnesses proved the version of the management and the failure of the workman to adduce evidence in support of his case also strengthens my view that the workman worked only for 3, 4 days after taking the advance of Rs. 500 and raised a demand for reinstatement only to pressurise the management to give up their demand for return of the advance and the management did not terminate the services of the workman. In fact he left the services on his own accord and did not report for duty after 11th February, 1977. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated 19th December, 1981

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 4495, dated the 30th December, 1981

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)82-6 Lab/251.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Manchanda Metal Works, Jagadhri:—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 17 of 1973

between

SHRI MADHIA WORKMAN AND THE MANAGEMENT OF M/S MANCHANDA METAL WORKS,
JAGADHRI

Present :—

Shri Surinder Kumar for the workman.
Shri Subhash Chander for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/Amb/224-A-73/101256-60, dated 13th March, 1973 under section 10(i)(c) of the I. D. Act for adjudication of the dispute existing between Shri Madhie, workman and the management of M/s Manchanda Metal Works, Jagadhri. The term of the reference was :—

Whether the termination of services of Shri Madhie was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference, notices as usual, were sent to the parties. The parties appeared filed their respective pleadings, on the basis of which the following issues were framed :

- (1) Whether it was necessary for the workman to serve a demand directly on the management and for the latter to reject it before the matter was taken to the Conciliation Officer, in order to constitute an industrial dispute ?
- (2) If yes, whether such a demand was directly raised by the workman on the management and rejected by the latter before the matter was taken to the Conciliation Officer ?
- (3) Whether the reference was made to this court after the closure of the factory and as such, is not maintainable ?
- (4) Whether the workman was a casual employee of the management on daily wages of Rs. 5 with effect from 1st January, 1972 ?
- (5) Whether the workman voluntarily abandoned his job on 25th June, 1972 ?
- (6) In case of non proof of issue Nos. 4 and 5 whether the termination of services of the workman was justified and in order ? If not, to what relief is he entitled ?

The workman did not propose to lead any evidence on issue Nos. 1 & 2 and made a statement to this effect on 21st July, 1976. The management examined Shri Sat Pal, Partner, Shri Charan Singh, son of Shri Gian Singh, resident of Jagadhri and Shri Hukam Chand, son of Shri Gopi Chand, resident of Jagadhri as their witnesses and closed their case on 19th January, 1977. The workman obtained four adjournments for the production of his evidence and the case of the workman was closed by my predecessor,—vide his order, dated 29th December, 1977. The application of the workman for reviewing this order was also dismissed on 27th June, 1978 by Shri Mohan Lal Jain, the then Presiding Officer. Shri Nath Ram Sharma, who acted as Presiding Officer, Labour Court allowed the application of the workman, dated 12th January, 1979 on 21st February, 1979 without hearing the respondent. By another order, dated 25th July, 1979 Shri B.R. Goel, the then Presiding Officer, Labour Court reviewed the order, dated 29th December, 1977 and 27th June, 1978 and allowed the workman to produce his evidence in rebuttal of the evidence of the management. The case was then continued being fixed for settlement but the settlement could not be reached and the evidence of the workman was recorded on 29th October, 1980. The case was fixed for hearing of arguments on 22nd April, 1981 but on the request of the parties the case was taken up on 2nd March, 1981. The parties addressed their arguments on this date of hearing. After hearing the parties and careful perusing the evidence on the record I decide issuewise as under :—

Issues Nos. 1 and 2. —As the management did not press for these issues and the law on these points is well settled and it is not necessary for the workman to serve a demand directly on the management and for the latter to reject the same before the matter is taken to the Conciliation Officer in order to constitute an industrial dispute. The issues are accordingly decided.

Issue No. 3. —The closure notice is Ex. WW-11. The copies of which have been endorsed to Secretary, Labour, Chandigarh, Labour Commissioner, Haryana and other authorities of the Labour Department by which the factory was temporarily closed on account of non-availability of the building material for four to five months and with a probability to be started at some earlier time. This temporary closure does not in my opinion render the reference of the dispute invalid as the dispute referred to this court would have consumed more time as had been stipulated in the notice of closure. The reasons given for closure of the factory are also of temporary nature and the difficulty in the way of the management could have been overcome if a sincere effort made towards that side. The issue is accordingly decided against the management.

Issue No. 5. —The management witness WW-1 has deposed that the workman absented himself from duty on 25th June, 1972 on his own accord and did not return thereafter. The Labour Inspector came to their factory on a complaint made by the workman sometime after his absence and some of their workmen made a joint statement before the Labour Inspector which was marked 'A' and later on was exhibited as MW-2/A. The witness was not cross-examined on this point by the workman. MW-2 and MW-3 have also corroborated the statement of MW-1 and testified that Ex. MW-2/A bore their signatures and denied the suggestion put to them that the workman was turned out of service. MW-1 has given out in his cross-examination that he signed on Ex. MW-2/A and also Shri Ram Sarup and Baisakhi who were employed there put their signatures on Ex. MW-2/A. He also admitted as correct that the Labour Inspector came to the factory in an enquiry regarding the case of the workman but he denied at the same time that the Labour Inspector obtained their signatures. He has also admitted that he filed a claim against the respondent for his remaining claim of wages which has not been paid to him by the respondent.

From these pieces of evidence it is abundantly clear that the workman left the services of the management on his own accord on 25th June, 1972. The issue is accordingly decided in favour of the management.

Issue No. 4.—Issue No. 4 becomes infructuous in view of my findings on issue No. 5.

Issue No. 6.—When issue No. 5 has been decided in favour of the management, issue No. 6 is accordingly decided that this is not a case of termination of services by the management requiring any justification as the workman abandoned his services voluntarily. The workman is not entitled to any relief. The reference is answered and returned accordingly. Moreover, no sanctity can be attached to the statement of a person like the workman who has denied his signatures on his notice of demand and his claim statement.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Dated, the 29th December 1981.

Endorsement No. 4504, dated 30th December, 1982

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)82-6Lab/419.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Haryana Filters Pvt., Ltd. 20/4, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 135 of 1981

between

SHRI RAM SAWNREY, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
HARYANA FILTERS PVT. LTD., 20/4, MATHURA ROAD, FARIDABAD

Shri Hoob Lal Yadav, for the workman.

Shri R.C. Sharma for the respondent-management.

AWARD

This reference No. 135 of 1981 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/49-81/17816, dated 31st March, 1981, under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between the workman Shri Ram Sawnrey and the respondent management of M/s Haryana Filters Pvt. Ltd., 20/4, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Ram Sawnrey was justified and in order? If not, to what relief is he entitled?

On receiving this reference, the notices were sent to the parties, they appeared and filed their pleadings. According to the claim statement, the case of the workman is that he joined the respondent factory on 18th October, 1976 as helper and drawing monthly salary of Rs. 265. On 13th December, 1980, the workman went to the tap for drinking water and smoke Bidi there and returning to duty place. The Manager Shri Batra met the workman and asked the workman not to go to his place of work as he was having Sun Bath in the open. Then he ordered the Cashier Mr. Avinash to issue warning letter to the workman which the workman refused to receive. On the refusal, Shri B. S. Kalra asked the workman to be out from the factory. The workman went to join his duty on 14th December, 1980, but he was denied entry in the factory. So it amounts to retrenchment and the respondent did not pay any compensation under section 25-F of the Industrial Disputes Act, 1947. The workman raised a dispute before the Conciliation Officer and there the management offered the workman afresh employment without prejudice to the present claim. The workman accordingly reported duty w.e.f. 2nd March, 1981 and he is still in the employment of the management. The management, had not paid him wages for the month of December, 1980 and January-February, 1981. The workman has prayed for directing the management to treat the workman as reinstated in their service with all consequential benefits.

According to the written statement, the case of the respondent is that the claimant was never terminated by the respondent-management. The claimant absented himself for a long time since 13th December, 1980 and he

again joined his duty. The workman is now in the service with continuity of service. So the reference is bad in law. The respondent has denied all fabricated story of the workman. The respondent asked number of times to the workman to report for duty as soon as possible. The workman was misguided by the outsider and he disagree with the proposal of the management. There is no industrial dispute with the workman as the workman joined his services with the management.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the reference is bad in law in accordance with the claim statement of the workman in Para No. 6? If so, to what effect?
- (2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?
- (3) Relief?

My findings on issues are as under :—

Issue No. 1 :

On this issue the representative of the management argued that the reference is bad in law because there is no dispute between the workman and the respondent when the workman admits in para No. 6 of the claim statement that he joined his duty from 2nd March, 1981 and still in the employment of the management. If there was any dispute then the claimant would not have joined the services of the respondent. The workman started remaining absent from duty from 13th December, 1980 and after 2/3 days the respondent issued a letter which is mark 'B' to the workman, dated 16th December, 1980 through registered A.D. post which is Ex. M-1 on which the claimant admits his signature to call the workman for his duties. But even after this letter the workman did not come in the factory to join his duty. The claimant raised a demand notice, dated 22nd December, 1980, on which the Conciliation Officer called the respondent for conciliation proceedings. In the conciliation proceedings which is Ex. M-3 the respondent has admitted this fact before the Conciliation Officer that they have not terminated the services of the workman and they are ready to give the service even at this stage. On this statement of the respondent the claimant came in the factory on 2nd March, 1981 to join his duties and he was given duty on same day as admitted by him in his claim statement para No. 6. The respondent has also admit this fact even in his statement in the court that the workman has taken on duty with continuity of service and he is working in the factory at present. Then there is no Industrial Dispute between the workman and the respondent. The representative of the workman admits all this fact in his arguments. After this admission of the workman's representative, Issue No. 1 is decided in favour of the respondent and against the workman.

Issue No. 2 :

Issue No. 2 is as per reference?

On this issue representative of the respondent argued that from the very beginning before the Conciliation Officer they took the same plea as today before this Court that they have not terminated the services of the workman at any stage. The workman absented himself from duty from 13th December, 1980 and after that he did not come in the factory to join the duties. He argued that the story made by the workman is also involved him in the misconduct under the law. When the manager saw him sitting in the open sun, leaving his place of work without any permission of his manager. He asked for the warning letter which the workman admit in the claim statement that he refused to take the warning letter, but very surprisingly that in his statement before this Court he had taken another plea that on that day the management was getting sign on some typed papers, which he did not sign them. In the claim statement the workman says that he refused to take the warning letter but in a statement he says that some typed papers were offered him for signature which he refused, so the workman cannot be believed. One step further the workman admits the signature on Ex. M-1, but says that he did not receive the letter mark 'B' which was the subject-matter of the registered letter on which he signed the acknowledgment receipt. In his cross-examination he admits that the respondent issued him a letter at his home address that I am absenting myself from duty. The workman also admits the suggestion of the respondent representative that on the first date of hearing before the Conciliation Officer the respondent offered to resume his duty without getting absent period wages. The claimant clearly mentioned the date of joining the duty as 2nd March, 1981 in his claim statement, but in his cross-examination as WW-2 he has stated that he joined his duty on 2nd March, 1981 again said on 2nd April, 1981 and again said on 4th April, 1981. So such persons cannot be believed who give wrong statement before this court after taking an oath. So in these circumstances, it is very clear that the respondent did not terminate the services of the workman. The workman joined his duty after coming from his home. He absented himself from duty on 13th December, 1980 without any leave or intimation. The respondent could take the action against his absence, but the respondent did not want to remove from the service as he was working well and to given the duty to the workman. When there is no order of termination then there is no adjudication of this order.

The representative of the workman argued that the workman was terminated by the respondent as he was not allowed to resume his duty on 14th December, 1980 and the respondent offered the job to the workman before the Conciliation Officer and so the workman resumed his duty on 2nd March, 1981. but he is entitled for the dues for the month of December, 1980 and Jan, Feb., 1981 because the respondent did not allowed the workman to resume his duty in this period so the workman should not suffer for the fault of the respondent.

After hearing the arguments of both the parties, and going through the file, I am of the view that the arguments put forward by the respondent has force, then the arguments put forward by the workman's representative. There is no allegation on the respondent of behalf of the workman. If there is any allegation it does not fall on the respondent, but on the claimant. The workman should not have refused the warning letter as alleged by the workman. He should have accepted and reply the same. Refusing to receive any letter of the respondent is a mis-conduct. The respondent offered the service to the workman in the month of February, 1981 but the workman joined his service in the first week of March, 1981 without any reason. So he cannot claim the wages for this period. There is no termination order of the respondent so it cannot be hold un-justified and improper. The claimant is on duty and the respondent had taken the workman on duty with continuity of service. Now there is no dispute between the workman and the respondent and he is not entitled to any relief. This may be read in answer to this reference.

Dated, the 4th January, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 69, dated 6th January, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9 (1) 82-5 Lab. 420.—In pursuance of the provisions of section 17 of the Industrial Disputes (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workmen and the management of M/s Executive Engineer, P.W.D. (B&R) Provt. Division No. I, Gurgaon.

**IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER,
LABOUR COURT, HARYANA FARIDABAD
Reference No. 169 of 1981**

Between

**SHRI VIJAY KUMAR WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S
EXECUTIVE ENGINEER, P.W.D. (B&R) PROVI. DIVISION NO. I, GURGAON**

Shri S.K. Yadav, for the workman.

SHRI S.R. Garg, for the respondent management.

AWARD

This reference No. 169 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/93-80/24939, dated 18th May, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Vijay Kumar, workman and the respondent management of M/s Executive Engineer, P.W.D. (B & R) Provt. Division No. I, Gurgaon. The terms of the reference was :—

Whether the termination of services of Shri Vijay Kumar was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference. The parties, appeared and filed their pleadings. According to the demand notice and claim statement, the case of the workman is that he was appointed as Motor mate on 6th January, 1979 at a salary of Rs. 300 p.m. approximately on a permanent post. The respondent terminated the services on 1st May, 1980 without assigning any reason to victimize the workman. The Workman has completed 240 days and acquired the status of permanent post. No chargesheet or notice was given at the time of termination, so the termination order was illegal and against the principles of natural justice. The

respondent did not pay any compensation at the time of termination. So he be reinstated with full back wages and continuity of service.

The case of the respondent according to written statement is that the P.W.D. (B & R) Branch Construction is not an industry under the definition of Industrial Disputes Act, 1947. The workman was appointed as motor mate on work charge basis for a specific period and on the completion of which his services were terminated in accordance with the terms and conditions of his appointment. The claimant has never completed 240 days service as work mate and no acquired any right to the post. The reference is bad on the basis of non-joiner and mis-join of the parties. The services of the claimant were terminated from time to time on 28th February, 1979, 12th September, 1979 and 14th September, 1979 according to the terms and conditions of the appointment lay down in para No. 1.127 of Public Works Department Code. The claimant worked on Motor Mate on temporary work charged basis from 6th January, 1979 to 28th February, 1979, 13th March, 1979 to 11th September, 1979 and 15th September 1979 to 14th November, 1979 for which period the said post was sanctioned by the competent authority in the public interest. The work charge employee have been given the appointment for specific period from time to time, so no chargesheet was necessary and no compensation is required for the termination of services of the workman of the workcharge employees employed for specific period.

On the pleadings of the parties, the following issues are framed :—

- (1) Whether the applicant is not a workman under the Industrial Disputes Act ? If so, to what effect ?
- (2) Whether the P.W.D (B. & R) Construction Division is not a industry under the Industrial Disputes Act ?
- (3) As per reference ?
- (4) Relief ?

My findings on the issues are as under:—

Issue No. 1 and 2.— The representative of the respondent conceded these issue and put forward no arguments, so these two issues decided in favour of the workman.

Issue No. 3.— On this issue the representative of the respondent argued that the workman was appointed purely on work charge basis on the sanction from time to time which are Ex. M-1 to M-7. The work charge persons are appointed for the specific work and after finishing the work his post is also finished. His salary are charge on that work according to the estimate of the work. So the work charge employee is not a permanent employee. He is purely temporary employee employed for a specific period which is sanctioned by the sanctioning authority. His name was recommended by the S.D.E.O. for appointment as Motor mate on workcharge basis for two months and his sanction was given vide Ex. M-1, dated 29th December, 1978 and he was appointed on work charge basis against the construction of Badshahpur School building and he was terminated after two Months, —vide Ex. M-2 dated 22nd July, 1979. Then again the sanction was taken for workcharge establishment for two months, —vide Ex. M-3 for the same scheme. Sanction was again taken for two Months from 12th May, 1979 to 11th July, 1979 chargeable to Government High School, Badshahpur. Then again sanction was taken vide Ex. M-5 from 12th July, 1979 to 11th September, 1979. Sanction was again taken from 15th September, 1979 to 31st October, 1979, vide Ex. M-6 chargeable to Government High School, Badshahpur and Government High School Bhondsi. The sanction was again taken by Ex. M-7 from 1st November, 1979 to 31st December, 1979 for two months. So the workman was a workcharge against the work shown in the sanction given for the claimant and he was paid from the estimated amount of this work and not from the Government Treasury as shown in the photostate copies of the payment sheets of the claimant. So the claimant was not a permanent employee. He was a workcharge employee which finishes with the finishing of the work. The workman has given no proof that he was terminated on 1st May, 1980. Without any proof on the file it is presumed that his services were terminated on 31st December, 1979 with the last sanctioned day, as shown in Ex. M-7. The workman has given no proof of any service. The claimant could summoned any record of the department to prove his case, but he had not summoned his record to prove his case so he has failed to prove his case that he was a permanent employee of the department. The services of the workman were terminated according to the service condition as laid down in the P.W.D. Code para No. 1.127 for the work charge employees and the nothing wrong in the termination of services of the workman. The department employee so many persons like this on the work when they are in a process in construction, but when the construction works finished their services were automatically terminated. He further argued that the workman had not completed 240 days from the continuous service so he is not entitled to any relief as he has claimed in his claim statement.

The representative of the workman argued that the workman was appointed on 6th January, 1979 and removed on 1st May, 1980. The respondent should have produced the attendance register and other record for attendance and payment of the workman but they failed to brought any record in the court. They should have produced the muster roll of the workman and the workman was employed as permanent employee though he was not given any appointment letter at the time of appointment and no termination order was issued to him, which is illegal and un-lawful on the part of the respondent. The workman has completed 240 days and after the continuous of 240 days he had acquired the status of permanent employee and he was entitled for compensation at the time of termination, which the respondent had failed to give any compensation at the time of termination. So the workman is entitled for his reinstatement, with full back wages and continuity of service.

After hearing the arguments of both the parties, I am of the views that the representative of the respondent has put his case very clearly. The workman was employed on a work charge basis with a time to time sanction from

the sanctioning authority. If the workman was a permanent employee there was no need of any sanction for the employee from time to time as it was purely work charge post so according to their code they took the sanction from the sanctioning authority for payment of wages of that employee. The workcharge employee is charge against the work under the estimate and not charge against any other sanctioned post. So, it was a purely temporary work charge job and after finishing of the work how the department can keep the person on roll. On the basis of above discussion I am of the view that the claimant is not entitled for any relief as demanded by him in his claim statement and demand notice. The workman has not produced any document or call any document or witness to prove his case. So, he is not entitled for any relief.

This be read an answer to this reference.

Dated the 5th January, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endstt. No. 70, dated the 6th January, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6Lab./476.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad/in respect of the dispute between the workmen and the management of M/s. American Universal Electric (India) Ltd., Model Town, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 567 of 1978

Between

SHRI GIANCHAND WORKMAN AND THE MANAGEMENT OF M/S AMERICAN UNIVERSAL
ELECTRIC (INDIA) LTD., MODEL TOWN, FARIDABAD

Present :—

Shri S. R. Gupta, for the workman.

Shri R. N. Rai, for the management.

AWARD

By order No. ID/206/78/54238, dated 1st December, 1978 the Governor of Haryana referred the following dispute between the management of M/s. American Universal Electric (India) Model Town, Faridabad and its workman Shri Gian Chand, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of subsection (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Gian Chand was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed by my learned predecessor on 9th February, 1979 :—

- (1) Whether the workman was on probation ? If so, to what effect ?
- (2) Whether the termination of services of the workman was justified and in order ?
- (3) Whether the workman is gainfully employed ? If so, at what wage and for what period ?
- (4) If not, to what relief is he entitled ?

The management examined in evidence Shri M. S. Hooda, Ex-Factory Manager as MW-1, Shri R. C. Jain, Senior Manager as MW-2 and Shri Dhan Singh, Time Keeper as MW-3. The workman examined himself as his own witness as WW-1. Arguments were heard. Now I give my finding issueswise :—

Issue No. 1 :—MW-1 deposed that he served the management from 1963 to 1979. He remained Factory Manager from 1974 to 1975 and was appointing authority. He knew the concerned workman who was appointed on temporary basis as Tool and Die Maker. Appointment letter was Exhibit M-5. He was given a regular job,—*vide* Exhibit M-2, but was kept on probation. Probation period was extended,—*vide* Exhibit M-4 which was signed by the Workman himself. In cross examination he stated that a regular vacancy had arisen after three months of service by the workman on which he was kept as probationer. MW-2 stated that the workman was employed on temporary basis per practice prevailing in the factory. After three months he was appointed on probation. In cross examination he could not tell the regular vacancy arose by leaving the job by which Workman. The workman was kept on probation for the reason that he had stated to be out of job for sometime.

The workman admitted his signatures on Exhibit M-1 and accepted of its original. He also admitted acceptance of copy of Exhibit. M-2.

I have gone through Exhibit M-2 appointment letter which was signed by Shri M. S. Hooda, Factory Manager. Shri Gian Chand the concerned workman accepted the terms in the following words :—

"I have read and understood the terms and conditions of my service contained in this letter and accept the same".

Clause 2 of the appointment letter is as under :—

"You will be on probation for a period of six months with effect from 6th October 1977. The probation period is liable to be extended at the sole discretion of the Management. You will not be deemed to have been confirmed unless you are informed in writing".

Exhibit M-4 is extension of probation period by three months which is also signed by MW-1 and the concerned workman. I find by the documentary evidence supported by MW-1 that the workman was on probation. This issue is, therefore, decided in favour of the management. As regards the effect of this, it will be seen in the next issue.

Issue No. 2.—MW-1 deposed that during probation period work of the concerned workman was not satisfactory. Shri R.C. Jain who was head of department had submitted report Exhibit M-3 which also bear signature of the witness. On the basis of this report the probationary period was extended by three months,—*vide* Exhibit M-4. The work was still not found satisfactory per report Exhibit M-5. It also bear signature of the witness. He further deposed that the workman never protested that he was a permanent workman. Services of the workman were terminated,—*vide* Exhibit M-6, copy of standing orders was Exhibit M-7. The workman remained sick for 2-3 months. His service was not terminated due to any extenuating reasons. In cross examination he replied that Exhibit M-8 and M-8A were workman's application for service. At that time there were 8-10 Die Makers in the factory. He could not tell their names, nor he could tell who had left the service in 1977-78. The concerned workman was appointed keeping in view his financial position and his past relation with the witness. He admitted that he had never written about Exhibit M-3 and M-5 to the workman because no such letters were written by the personnel department rather the concerned head of the department informed the workman about his work. Head of the department of the workman had informed a number of times because he was appointed by the witness. He also informed the workman about the assessment of his work. He denied the suggestion that Exhibit M-3 and M-5 were prepared for the purpose of this case. He denied the suggestion that there were unfair labour practice in the factory. He also denied the suggestion that the workman was sick at the time of termination. He admitted that the workman was not paid any compensation at the time of his termination. MW-2 deposed that the concerned workman worked under him. He proved assessment report Ex. M-3 and Ex. M-5 and stated that the work of the concerned workman was not satisfactory. In cross examination he stated that there were 30-40 Die Makers at that time. He could not tell the names who had left in during 1977 and 1978. He also could not tell in whose vacancy the workman was appointed. He had seen Exhibit M-8 and Exhibit M-8A before giving appointment letter to the workman. It was felt necessary to appoint him on probation because the workman had remained out of job for some time. MW-3 stated that he was in the service of the management for the last six years. He had brought attendance register for the months of March 1978 to July 1978. The workman was present for 14 days in March. He remained for 11 days on leave and on one day absent. In April he worked for 8 1/2 days. Copies from the attendance register were Exhibit M-9 to M-13. The workman remained on ESI leave from 17th April, 1978 to 27th June, 1978 and he was absent from 28th June, 1978 to 5th July, 1978. No other medical certificate except Exhibit M-14 and M-15 was received from the workman. In cross-examination he stated that there were 22 Tool Makers in July 1978.

WW-1 stated that he joined service on 6th July, 1977. Work of Die Maker was of a permanent nature. He had worked in the company as Die Maker from 1967 to 1968. His services were terminated on 5th July, 1978.

His services were terminated when he was sick. He had fallen sick in the month of February 1978. He could not attend duty after 14th March, 1978. When he went for duty on 29th July, 1978 he was not taken by the management. He was not paid any retrenchment compensation. In cross examination he stated that he had left the job in 1968 because he wanted to start his own business. He denied the suggestion that his work was not satisfactory and stated that he was never informed about his work. He could not tell if he worked any day after 14th March, 1978. He accepted his medical certificates Exhibit M-14 to M-17. He admitted having received letter copy Exhibit M-6 by post and admitted A.D. card Ex. M-18.

The learned representative for the management argued that the workman was on probation. His work was not found satisfactory during probation, therefore, his service was terminated. He cited 1964, Volume 8 Indian Factories and Labour Reports page 288 and 1963-64 Volume 25 Indian Factories Journal page 25. On the other hand the learned representative for the workman argued that it was a case of unfair labour practice. The workman worked upto 14th March, 1978. He was appointed on probation although he had an experience of about 14 years. He was never informed about his unsatisfactory work. It was not a case of discharge simpliciter and his services were terminated during sickness.

Exhibit M-6 termination letter does not speak of any misconduct. It is a simple termination letter. Exhibit M-3 contains report of head of the department in which he has given that the workman requires frequent guidance of his supervisor. He is slow in work and performance was below normal and recommended his replacement. Exhibit M-5 was also a rating report in which termination was recommended. According to the Standing Orders clause 3(b) the management had discretion to extend the period of probation upto one year. Clause 3 of Exhibit M-2 is as under :

“During your probation period, your services can be terminated with or without notice and/or assigning any reason there.

In 1964 Volume 8 Indian Factories and Labour Reports page 289 it was held by the Supreme Court that at the end of probation period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination the employee continues to be in service as a probationer. In 1963-64 Volume 25 Indian Factories Journal page the, Hon'ble the Supreme Court held that the object of section 73(I) of the ES Act, 1948 is to put a sort of a moratorium against all punitive actions during the pendency of the employee's sickness. It is further held that there is no provision in the ESI Act, 1948 or the regulations framed there under by which it could be contended that once the illness of an insured person is accepted by the appropriate authority under the Act, it must automatically be accepted by the employer. Evidence in this case leads me to the conclusion that the services of the concerned workman were terminated after expiry of his probation period which the employer had power to do and it was a settled position of law. The contention of ESI provision is not applicable because action was not penal. The workman had not put in 240 days of service entitling him to any compensation, therefore, payment of notice pay or compensation was also not obligatory upon the management. This issue is also decided in favour of the management.

Issue No. 3:—As per finding given by me on issue No. 2, this issue needs no decision.

Issue No. 4 :—The workman is not entitled to any relief.

While answering the reference I give my award that the termination of services of the workman was justified and in order. [The workman is not entitled to any relief.

Dated the 6th January, 1982.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

Endorsement No. 33, dated [the 7th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.